

**ORDINANCE NUMBER 10-10544**

**AN ORDINANCE AMENDING CHAPTER 24 OF THE SALINA CODE BY ADDING ARTICLE II PERTAINING TO ILLICIT DISCHARGE.**

**BE IT ORDAINED** by the Governing Body of the city of Salina, Kansas:

**Section 1.** That Chapter 24, Article II of the Salina Code is hereby added is follows:

**ARTICLE II. ILLICIT DISCHARGE**

**Sec. 24-11. Purpose and findings.**

- (a). The purpose of this Code shall be to prevent the discharge of pollutants from land and activities within the City into the municipal separate storm sewer system (MS4) and/or into surface waters.
- (b). The Governing Body of the City of Salina hereby finds that pollutants are discharged into surface waters, both through inappropriate non-stormwater discharges into the MS4 or the surface waters directly, and through the wash off and transport of pollutants found on the land and built surfaces by stormwater during rainfall events.
- (c). Further, the Governing Body of the City of Salina hereby finds that such discharge of pollutants may lead to increased risks of disease and harm to individuals, particularly children, who come into contact with the water; may degrade the quality of such water for human uses, such as drinking, irrigation, recreation, and industry; and may damage the natural ecosystems of rivers, streams, lakes and wetlands, leading to a decline in the diversity and abundance of plants and animals.
- (d). Further, the Governing Body of the City of Salina hereby finds that this ordinance will promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the storm drainage system.
- (e). Further, the Governing Body of the City of Salina hereby finds that such discharges are inconsistent with the provisions and goals of the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES), and other federal and state requirements for water quality and environmental preservation.
- (f). Further, the Governing Body of the City of Salina hereby finds that a reasonable establishment of restrictions and regulations on activities within the City is necessary to eliminate or minimize such discharges of pollutants, to protect the surface waters of the community, to protect the health and safety of citizens, to protect the MS4 from damage and/or diminution of performance, to protect property owners from harm caused by the actions of others, to preserve economic and ecological value of existing water resources within the City and within downstream communities, and to comply with the provisions of the City's responsibilities under the Clean Water Act and the NPDES program.

**Sec. 24-12. Definitions.**

For the purposes of this article, the following shall mean:

*“Authorized Enforcement Agency”* employees or designees of the director of the municipal agency designated to enforce this ordinance.

*“Best Management Practices (BMPs)”* schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

*“Car”* means any vehicle meeting the definition for passenger car, passenger van, pickup truck, motorcycle, recreational vehicle, or motor home given in Section 38.82 of the Code.

*“City”* means the City of Salina, Kansas.

*“City Engineer”* means the City Engineer of the Engineering Division of the Public Works Department or the City Engineer's authorized representative.

*“Clean Water Act”* means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

*“Code”* means the Salina Municipal Code.

*“Construction Activity”* means the activities subject to NPDES Construction Permits. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

*“Discharge”* means the addition or introduction, directly or indirectly, of any pollutant, stormwater, or any other substance into the MS4 or surface waters.

*“Domestic sewage”* means human excrement, gray water (from home clothes washing, bathing, showers, dishwashing, and food preparation), other wastewater from household drains, and waterborne waste normally discharged from the sanitary conveniences of dwellings (including apartment houses and hotels), office buildings, retail and commercial establishments, factories, and institutions, that is free from industrial waste.

*“Extremely hazardous substance”* means any substance listed in the appendices to 40 CFR Part 355, Emergency Planning and Notification.

*“Fertilizer”* means a substance or compound that contains a plant nutrient element in a form available to plants and is used primarily for its plant nutrient element content in promoting or stimulating growth of a plant or improving the quality of a crop, or a mixture of two or more fertilizers.

*“Hazardous household waste (HHW)”* means any material generated in a household (including single and multiple residences) by a consumer which, except for the exclusion provided in 40 CFR Section 261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261 or K.A.R 28-29-23b.

*“Hazardous Materials”* means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

*“Hazardous substance”* means any substance listed in Table 302.4 of 40 CFR Part 302.

*“Hazardous waste”* means any substance identified or listed as a hazardous waste by the EPA pursuant to 40 CFR Part 261.

*Illegal Discharge* means any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section X of this ordinance.

*Illicit Connections* means an illicit connection is defined as either of the following: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

*Industrial Activity* means activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

*“Industrial waste”* means any waterborne liquid or solid substance that result from any process of industry, manufacturing, mining, production, trade, or business.

*“Municipal separate storm sewer system (MS4)”* means the system of conveyances, (including roads with drainage systems, municipal streets, private streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City and designed or used for collecting or conveying stormwater, and which is not used for collecting or conveying sewage.

*“NPDES”* means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under Sections 307, 402, 318 and 405 of the federal Clean Water Act.

*“National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit”* means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

*“Non-Storm Water Discharge”* means any discharge to the storm drain system that is not composed entirely of storm water.

*“Oil”* means any kind of oil in any form, including but not limited to: petroleum, fuel oil, crude oil, synthetic oil, motor oil, bio-fuel, cooking oil, grease, sludge, oil refuse, and oil mixed with waste.

*“Person”* means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

*“Pesticide”* means a substance or mixture of substances intended to prevent, destroy, repel, or migrate any pest, or substances intended for use as a plant regulator, defoliant, or desiccant.

*“Petroleum Product”* means a product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel or lubricant in a motor vehicle, boat or aircraft including motor oil, motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil and #1 and #2 diesel fuel.

*“Pollutant”* means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

*“Property Owner”* shall mean the named property owner as indicated by the records of the Saline County Treasurer’s Office;

*“Release”* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the MS4 and/or surface waters.

*“Sanitary sewer”* means the system of pipes, conduits, and other conveyances which carry industrial waste and domestic sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, to a sewage treatment plant and to which stormwater, surface water, and groundwater are not intentionally admitted.

*“Septic tank waste”* means any domestic sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

*“Sewage”* means the domestic sewage and/or industrial waste that is discharged into the sanitary sewer system and passes through the sanitary sewer system to a sewage treatment plant for treatment.

*“State”* means the state of Kansas.

*“Storm Sewer System”* means any conveyance or system of conveyances for Stormwater, including road with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, as well as any system that meets the definition of a Municipal Separate Storm Sewer System or “MS4” as defined by the Environmental Protection Agency in 40 CFR 122.26.

*“Storm Water”* means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

*“Stormwater Pollution Prevention Plan”* means a document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

*“Surface waters”* means any body of water classified as “surface waters” by the state of Kansas, including streams, rivers, creeks, brooks, sloughs, draws, arroyos, canals, springs, seeps, cavern streams, alluvial aquifers associated with these surface waters, lakes, man-made reservoirs,

oxbow lakes, ponds, and wetlands, as well as any other body of water classified by the federal government as a "water of the United States".

*"Waste"* means any garbage, refuse, sludge or other discarded material which is abandoned or committed to treatment, storage or disposal, including solid, liquid, semisolid or contained gaseous materials resulting from industrial, commercial mining, community and agricultural activities. Waste does not include solid or dissolved materials in domestic sewage or irrigation return flows or solid or dissolved materials or industrial discharges which are point sources subject to permits under the State of Kansas. The Federal definition of solid waste is found at 40 CFR 257.2.

*"Wastewater"* means any water or other liquid, other than uncontaminated storm water, discharged from any source.

*"Water quality standard"* means the law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

#### **Sec. 24-13. Applicability.**

This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

#### **Sec. 24-14. Responsibility for administration.**

The City Manager shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

#### **Sec. 24-15. Severability.**

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.

#### **Sec. 24-16. Ultimate Responsibility.**

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

#### **Sec. 24-17. Prohibition of Illegal Discharges.**

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

The specific prohibitions and requirements in this section are not inclusive of all the discharges prohibited by the general prohibition, but are provided to address specific discharges that are frequently found or are known to occur:

- (a). No person shall knowingly release or allow to be released any of the following substances into the MS4:
  1. Any new or used petroleum product or oil;
  2. Any industrial waste;
  3. Any hazardous substance or hazardous waste, including household hazardous waste;
  4. Any domestic sewage or septic tank waste, grease trap or grease interceptor waste, holding tank waste, or grit trap waste;
  5. Any garbage, rubbish or other waste;
  6. Any new or used paints, including latex-based paints, oil-based paints, stains, varnish, and primers, as well as cleaning solvents and other associated products;
  7. Any yard wastes which have been placed by a person in any portion of the MS4.
  8. Any wastewater that contains soap, detergent, degreaser, solvent, or surfactant based cleaner from a commercial motor vehicle wash facility; from any vehicle washing, cleaning, or maintenance at any new or used motor vehicle dealership, rental agency, body shop, repair shop, or maintenance facility; or from any

- washing, cleaning, or maintenance of any business or commercial or public service vehicle, including a truck, bus or heavy equipment;
9. Any wastewater from a commercial mobile power washer or from the washing or other cleaning of a building exterior that contains soap, detergent, degreaser, solvent, or any surfactant based cleaner;
  10. Any wastewater from commercial floor, rug, or carpet cleaning;
  11. Any wastewater from the commercial washdown or other commercial cleaning of pavement that contains any soap, detergent solvent, degreaser, emulsifier, dispersant, or other cleaning substance; or any wastewater from the wash-down or other cleaning of any pavement where any spill, leak, or other release of oil, motor fuel, or other petroleum or hazardous substance has occurred, unless all such materials have been previously removed;
  12. Any effluent from a cooling tower, condenser, compressor, emissions scrubber, emission filter, or the blowdown from a boiler;
  13. Any ready-mixed concrete, mortar, ceramic, or asphalt base material or discharge resulting from the cleaning of vehicles or equipment containing or used in transporting or applying such material;
  14. Any runoff, washdown water or waste from any animal pen, kennel, fowl or livestock containment area ;
  15. Any filter backwash from a swimming pool or fountain, except that nothing in this ordinance shall be construed as to require the alteration of the filter discharge plumbing of an existing swimming pool, fountain or spa if such plumbing was compliant with applicable state, federal, and local regulations at the time of construction;
  16. Any swimming pool, fountain or spa water containing a harmful level of chlorine (> 1 parts per million), muriatic acid or other chemical used in the operation of the pool or treatment or disinfection of the water or during cleaning of the facility at the point of discharge in to surface waters;
  17. Any discharge from water line disinfection by super chlorination if it contains a harmful level of chlorine (>1 parts per million) at the point of entry into surface waters;
  18. Any contaminated runoff from a vehicle wrecking or storage yard;
  19. Any substance or material that will damage, block, or clog the MS4;
  20. Any release from a petroleum storage tank (PST), or any leachate or runoff from soil contaminated by leaking PST; or any discharge of pumped, confined, or treated wastewater from the remediation of any such PST release, unless the discharge has received an NPDES permit from the state;
  21. Any other discharge that causes or contributes to causing the City to violate a state water quality standard, the City's NPDES stormwater permit, or any state-issued discharge permit for discharges from its MS4.
- (b). Except acceptable discharge associated with an approved erosion control plan, no person shall introduce or cause to be introduced into the MS4 any harmful quantity of sediment, silt, earth, soil, or other material associated with clearing, grading, excavation or other construction activities in excess of what could be retained on site or captured by employing sediment and erosion control measures, except as allowed for in conformance with Article III of Chapter 24.
  - (c). No person shall connect a line conveying sanitary sewage, domestic or industrial, to the MS4. No property owner shall allow such a connection to continue in use on their property.
  - (d). No person shall use pesticides, herbicides and fertilizers except in accordance with manufacturer recommendations. Pesticides, herbicides and fertilizers shall be stored transported and disposed of in a manner to prevent release to the MS4.
  - (e). The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:
    1. car or vehicle washing – noncommercial
    2. contaminated groundwater if authorized by KDHE and approved by the municipality
    3. crawl space pumps

4. diverted stream flow
  5. driveway washing (residential only)
  6. Dye testing provided verbal notification is provided to the municipality prior to the time of the test.
  7. fire fighting activities
  8. footing drains
  9. foundation drains
  10. heat pump discharge waters (residential only)
  11. lawn watering or landscape irrigation
  12. natural riparian habitat
  13. potable water source discharges
  14. rising groundwater
  15. roof drains not interconnected to the MS4
  16. street wash waters (excluding street sweepings which have been removed from the street)
  17. swimming pool discharges – dechlorinated and excluding filter backwash
  18. uncontaminated groundwater infiltration as defined under 40 CFR 35.2005(20) to separate storm sewer
  19. wastewater or other discharges that have been treated and meet the requirements of a NPDES permit
  20. water line flushing
  21. wet-land flows
  22. other discharges determined by the city manager or their designee not to be a significant source of pollutants to waters of the state, a public health hazard or a nuisance or necessary to protect public health and safety.
- (f). Notwithstanding the provisions of subsection B of this section, any discharge shall be prohibited by this section if the discharge in question has been determined by the City Engineer or KDHE to be a source of a pollutants to the MS4 or to surface waters, written notice of such determination has been provided to the property owner or person responsible for such discharges, and the discharge has occurred more than ten days beyond such notice.

**Sec. 24-18. Prohibition of illicit connections.**

- (a). The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- (b). This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (c). A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.
- (d). It is unlawful for any Person to construct, establish, use, maintain, or continue Illicit Connections to the Municipal Separate Storm Sewer System ninety (90) days after the effective date of this ordinance, or to commence any Illicit Discharges to the Municipal Separate Storm Sewer System. This prohibition against Illicit Connections is expressly retroactive and applies to connection made in the past and maintained ninety (90) days after the effective date of this ordinance but excludes improvements to real property permitted over which uncontaminated Stormwater Runoff flows.
- (e). Illicit Connections in violation of this Chapter must be disconnected and redirected as ordered by the City Engineer.
- (f). Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the Municipal Separate Storm Sewer System must be located by the owner or occupant of that property upon receipt of written notice of violation from the City Engineer requiring that such location be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be completed, that the drain or conveyance be identified as storm sewer, sanitary sewer or

other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer, or other discharge point be identified. Results of these investigations are to be documented and provided to the City Engineer. Upon receipt of the investigation results the City Engineer shall direct the owner or occupant of the property in writing to complete such measures as are necessary to ensure compliance with this Chapter. It shall be unlawful for any such owner or occupant to fail to comply with the reasonable directions issued by the City Engineer in a timely manner.

- (g). On or after the effective date of this ordinance, any person who connects a drain or conveyance to the Municipal Separate Storm Sewer System shall obtain a Stormwater Drainage System Connection permit from the City Engineer prior to establishing any such connection.
- (h). No person shall tamper with, destroy, vandalize, or render inoperable any BMPs which have been installed for the purpose of eliminating or minimizing pollutant discharges, nor shall any person fail to install or fail to properly maintain any BMPs which have been required by the City or by other local, state, or federal jurisdictions.

**Sec. 24-19. Suspension due to illicit discharges in emergency situations.**

The City of Salina may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the United States, or to minimize danger to persons.

**Sec. 24-20. Suspension due to the detection of illicit discharge.**

Any person discharging to the MS4 in violation of this ordinance may be deemed to be maintaining a nuisance as defined by Sections 24-2.15 and 6 of the City Code and shall be subject to Section 24-4 entitled Enforcement Against Nuisances; Designation of Officer; Order of Abatement; Hearing; Notice to Appear and Section 24-5 entitled Abatement of Nuisance by City; Notice of Costs; Assessment and Collection and may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. In addition to the notices and processes provided in Section 24-4 and 5, the authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

**Sec. 24-21. Industrial or construction activity discharges.**

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Salina prior to the allowing of discharges to the MS4.

**Sec. 24-22. Monitoring of discharges.**

The City Manager or his designee is authorized to develop and implement a plan to actively detect and eliminate prohibited discharges and connections to the MS4 or surface waters within the City. Such plan may include, but is not limited to, periodic and random inspections of facilities and businesses, particularly those most associated with potentially prohibited discharges; visual surveys of exterior practices; inspection, sampling and analyses of discharges from outfalls of the MS4, particularly during dry weather periods; manhole and pipe inspections to trace discharges through the system to point of origin; education on pollution prevention; and receipt of complaints and information from the public regarding known or suspected discharges.

**Sec. 24-23. Requirements to prevent, control, and reduce storm water pollutants by the use of Best Management Practices.**

The City of Salina may adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of approved structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the

municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan (SWPPP) as necessary for compliance with requirements of the NPDES permit.

**Sec. 24-24. Watercourse protection.**

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

**Sec. 24-25. Release reporting and cleanup.**

- (a). Any person responsible for the release of any prohibited material that may flow, leach, enter, or otherwise be introduced into the MS4 or surface waters shall take all necessary steps to ensure the containment and cleanup of such release.
- (b). In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.
- (c). In the event of a release of non-hazardous materials, said person shall notify the City Engineer in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the City Engineer within three business days of the phone notice.

**Sec. 24-26. Enforcement.**

- (a). The Governing Body hereby delegates to the City Manager the authority to designate a public officer to be charged with the administration and enforcement of this Ordinance as it concerns illicit discharges. The public officer shall authorize the investigation of violations. If it is determined that a violation exists, then the officer shall file a written report with the City Manager and direct that an order of abatement be sent to the property owner, representative, or tenant. The Governing Body, by resolution, also may make such determination;
- (b). Except as provided by Subsection C, the order of abatement shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service, or if the same is unoccupied and the owner is a nonresident, then by mailing a notice by certified mail, return receipt requested, to the last known address of the owner.
- (c). If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of an order sent pursuant to this Section during the preceding 24-month period, the City may provide notice of the issuance of any further orders to abate or remove a nuisance from such property in the manner provided by Subsection B or as provided in this Subsection. Except as specifically provided in this Subsection, the City may provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this Section shall be given by telephone communication or first class mail.
- (d). The order of abatement shall state:
  - 1. A common or legal description of the property, or both;
  - 2. The nature of the violation, including relevant ordinances, with sufficient information that would reasonably allow the recipient to determine the nature of the violation to allow for self-abatement;
  - 3. That the condition creating the violation shall be abated within a designated time period, provided that extensions of such time period shall be granted if the owner or agent of the owner of the property demonstrates that due diligence is being exercised in abating the violation;
  - 4. That the recipient, upon written request, may obtain a hearing before a designated hearing officer, provided such request is received by the City Clerk prior to the expiration of the designated compliance period;
  - 5. That failure to comply with the order of abatement shall result in the City abating the violation with the assessment of costs made against the property or by filing for judgment against the recipient;

6. That failure to pay such assessment within 30 days of the notice of costs shall result in the filing of a tax lien against the property, or the filing for judgment against the recipient, or both;
  7. Those such violations are subject to prosecution.
- (e). If the recipient of the order of abatement makes a written request for hearing within the designated compliance period, then the City shall immediately schedule a hearing before a designated hearing officer. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent by certified mail to all relevant parties within 10 days of the hearing, unless otherwise stated at the hearing and prior to the City taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific Code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.
  - (f). The City Manager, or his designee, is hereby designated as the hearing officer as the representative of the governing body for the purposes of conducting hearings requested by any recipient of an order of abatement.
  - (g). It shall be unlawful for the property owner of any property or the agent of the owner of the property who has received a compliance order or upon whom an order of abatement has been served to sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the notice have been complied with, or until such property owner or agent of the owner of the property shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any order of abatement and shall furnish to the public officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of abatement and fully accepting responsibility without condition for making the corrections or repairs required by the notice of abatement.
  - (h). If the recipient of the order of abatement fails to comply with the order within the period of time designated in the order, or fails to comply with the order after a hearing on the matter, then the City may go onto the property to abate the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violation(s). The City may use its own employees or contract for services to abate nuisances.
  - (i). If the City takes action to abate the violation, it shall provide a Notice of Costs to the property owner, representative, or tenant. The Notice of Costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the Notice of Costs shall also be posted on the property in a reasonable manner. The recipient shall have 30 days from the date of the Notice to make full payment. The Notice of Costs shall state:
    1. The common or legal description of the property, or both;
    2. The nature of the violation, including relevant ordinances;
    3. The nature of the work performed to abate the violation;
    4. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
    5. That the notice is a demand for payment within 30 days from the date of notice;
    6. That failure to pay the entire amount within 30 days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
    7. That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;
    8. The payments shall be made by check or money order made payable to the City of Salina, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments, unless a payment arrangement has been agreed to and approved in writing by the Public Officer.
  - (j). If the payment of costs is not made within the 30-day period, the City may levy a special assessment for such costs against the lot or piece of land. The City Clerk at the time of certifying other City taxes to the County Clerk shall certify the aforesaid costs, and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the City as other City taxes are collected and paid. Provided further, the City may collect the costs in the manner

provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs, including but not limited to, investigative cost as well as the cost of providing notice, including any postage, have been paid in full.

- (k). The abatement of a nuisance by the City shall not be a defense or excuse to the owner of a vehicle or property in violation of this chapter.

**Sec. 24-27. Injunctive relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this ordinance, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Sec. 24-28. Compensatory actions.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this article, the authorized enforcement agency may impose upon violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Sec. 24-29. Criminal prosecution.**

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of not less than \$50 nor more than \$500 dollars per violation per day and/or imprisonment for a period of time not to exceed 6 months.

The authorized enforcement agency may recover all attorneys' fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

**Sec. 24-30. Remedies not exclusive.**

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

If any section, subsection, paragraph, sentence, clause or phrase in this Ordinance or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall no affect the validity or effectiveness of the remaining portions of this ordinance."

**Section 2.** That Article II of Chapter 24 is hereby added.

**Section 3.** That this ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper.

Passed: May 10, 2010  
Adopted: May 24, 2010

[SEAL]

ATTEST:

Aaron G. Peck, Mayor

Lieu Ann Elsey, CMC, City Clerk

## ORDINANCE NUMBER 10-10545

### AN ORDINANCE AMENDING CHAPTER 24 OF THE SALINA CODE BY ADDING ARTICLE III PERTAINING TO EROSION CONTROL.

**BE IT ORDAINED** by the Governing Body of the city of Salina, Kansas:

**Section 1.** That Article III of Chapter 24 is hereby added and reads as follows:

#### “ARTICLE III. EROSION CONTROL

##### **Sec. 24-31. Purpose.**

The purpose of this article is to set forth procedures for controlling erosion and sedimentation caused by Land Disturbance activities, thereby providing for the protection and enhancement of the water quality of watercourses, Water Bodies and wetlands.

##### **Sec. 24-32. Definitions**

*"Best Management Practices (BMPs)"* mean physical facilities, schedules of activities, prohibitions of practices, maintenance procedures, and other management practices which, when properly designed, installed and maintained, will be effective to prevent or reduce the discharge of water or air pollution associated with Land Disturbance activities regulated by this article.

*"Certified Professional in Erosion and Sediment Control (CPESC)"* means an individual who is currently holding such certification as issued by CPESC, Inc., or other Person holding a state license authorizing them to prepare and submit an Erosion and Sediment Control Plan.

*"City Engineer"* means the City Engineer or the City Engineer's authorized representative.

*"Clearing"* means any activity that removes the vegetative surface cover.

*"Code"* means the Salina Municipal Code.

*"Drainage Way"* means any channel that conveys surface runoff throughout the site.

*"Erosion"* means the wearing away of land by the action of wind, water, gravity or ice or a combination thereof.

*"Erosion Control"* means a measure that prevents erosion.

*"Erosion and Sediment Control Plan" or "Plan"* means a Plan for the control of soil erosion and sedimentation resulting from land disturbing activity, and may include, without being limited to, the drawings, specifications, construction documents, schedules, or other related documents which establish the Best Management Practices (BMPs) on a project. The Plan shall include any information required to review the design of the BMPs and to ensure proper installation, maintenance, inspection, and removal of the BMPs, along with the details required to construct any portion of the final storm sewer system that was impeded by a BMP.

*"Erosion and Sediment Control Standards" or "Standards"* means the Erosion and Sediment Control design criteria and specifications adopted in writing by the City Engineer.

*"Control Plan"* means indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

*"Grading"* means excavation or fill of material, including the resulting conditions thereof.

*"Land Disturbance"* means any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

*"Perennial Vegetation"* means grass or other appropriate natural growing vegetation that provides substantial land cover, Erosion protection and soil stability and that is capable of sustained and healthy growth over multiple years under the constraints of shade, temperature, and moisture that will be prevalent on the site. For the purposes of this article, annual grasses that do not regenerate after winter, ornamental plants or shrubs that do not offer effective Erosion and Sediment protection, and plants that are not suitable for the expected growing conditions on the site shall not be considered Perennial Vegetation.

*"Perimeter Control"* means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

*"Permit"* means a Building Permit for construction of a building, Site Development Permit, Land Disturbance Permit, or Right of Way Permit.

*"Permit Holder"* means the owner or contractor who is issued a Permit pursuant to this Section. The Permit Holder may designate a separate contact person regarding field issues related to erosion and sediment control.

*"Person"* means any individual, business, partnership, corporation, association, organization or legal entity of any kind including governmental entities.

*"Phasing"* means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

*"Sediment"* means any solid material, organic, or inorganic that has been deposited from its site of origin by wind, water, ice or gravity as a result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, or gravity.

*"Sediment Control"* means Measures that prevent eroded sediment from leaving the site.

*"Site"* means a parcel of land or a contiguous combination thereof, where grading work is performed as a single unified operation.

*"Site Development"* means a permit issued by the municipality for the construction or alteration of ground

*"Stabilization"* means the use of practices that prevent exposed soil from eroding.

*"Start of Construction"* means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading, and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

*"Storm Sewer System"* means any conveyance or system of conveyances for stormwater, including road with drainage systems, streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, as well as any system that meets the definition of a Municipal Separate Storm Sewer System or "MS4" as defined by the Environmental Protection Agency in 40 CFR 122.26.

*"Stormwater"* means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

*"Water Bodies"* means surface waters including rivers, streams, lakes and wetlands, including all areas designated by the federal government as water of the United States.

*"Watercourse"* means any body of water, including, but not limited to lakes, ponds, rivers, streams, and bodies of water delineated by the City of Salina.

*"Waterway"* means a channel that directs surface runoff to a watercourse or to the public storm drain.

#### **Sec. 24-33. Permits.**

The City Engineer shall be responsible for the administration and enforcement of this article. The City Engineer shall have the authority to adopt regulations, policies and procedures as necessary for the enforcement of this Article. The City Engineer may waive the requirements for maps, plans, reports or drawings, if the City Engineer finds that the information otherwise submitted or to be submitted will be sufficient to show that the proposed work will conform to the requirements of this Article.

#### **Sec. 24-34. Land disturbance permits -- when required**

- (a). A land disturbance permit shall be obtained from the City Engineer prior to commencement of any of the following:
  1. Any activity that changes the physical conditions of landform, vegetation and hydrology, creates bare soil, or otherwise may cause erosion or sedimentation of one or more acres of land or part of a larger common plan of development or sale which may disturb a cumulative total of one or more acres. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials
  2. Utility construction; except for storm sewer construction which requires a Site Development Permit or Public Improvement Permit.
  3. Construction of any privately funded public streets, public storm sewer systems, public street lighting and the appurtenances related to these public facilities, except when the public improvements are constructed or contracted by the City.
- (b). Regardless of whether or not a Land Disturbance activity requires a Permit, any Person engaged in any Land Disturbance activity remains subject to the illicit discharge prohibitions and requirements contained in this Article and shall comply with the spirit and intent of this Article. At a minimum, such Persons shall employ BMP methods for Erosion and Sediment Control in proportion to the scale of the activity to reduce the amount of Sediment or other pollutants in stormwater discharges associated with those activities.

**Sec. 24-35. Building permits -- compliance with existing land disturbance permits.**

Issuance of any building permit that is part of a common plan of development with a pre-existing land disturbance permit, will require written agreement by the permit applicant to comply with the provisions of the pre-existing land disturbance permit.

**Sec. 24-36. Franchised and/or Public Utilities Permit(s)**

In lieu of obtaining individual project Land Disturbance Permits for utility-funded linear projects, the City may issue a General Permit to franchise and public utilities which shall be renewed annually. To apply for a General Permit, the utility must submit a permit application which includes:

- (a). Effective erosion control standards and construction methods that are to be implemented on the utility's projects, conforming to Sections 24-34. The General Permit does not relieve the utility of the responsibility of preparing and implementing project specific Stormwater Pollution Prevention Plans (SWPPP), as defined by the State of Kansas, for projects disturbing over 1 acre of area.
- (b). A procedure to notify the City, no less than 14 days prior to work beginning, of projects disturbing a cumulative area greater than 1 acre. The notification shall be accompanied by a copy of the Stormwater Pollution Prevention Plan (SWPPP) and the associated Kansas Department of Health and Environment (KDHE) Notice of Intent (NOI).
- (c). A mechanism to reimburse the City for the cost of all abatement actions. The City Engineer may revoke a Land Disturbance General Permit for failure to reimburse City abatement costs within 60 days of receipt of an abatement invoice. The utility must notify the City Engineer in writing within 14 days of any State or Federal citations related to erosion and sediment control violations in the City. The City Engineer shall revoke any general permit when the activities authorized by that General Permit cause the City of Salina to be noncompliant with the City's National Pollutant Discharge Elimination System (NPDES) permit.

**Sec. 24-37. Land disturbance permits – exemptions.**

- (a). Land disturbance permit is not required for the following:
  - 1. Work to correct or remedy emergencies, including situations that pose an immediate danger to life, property or natural resources or pose the risk of substantial flood or fire hazards.
  - 2. Existing nursery and agricultural operations conducted as a permitted main or accessory use.
  - 3. Land disturbance activities specifically authorized by a building permit which includes an erosion and sediment control plan covering the entire area of disturbance. This exemption is not intended to exempt the building permit from erosion and sediment control requirements provided by Sections 24-46, 47, 48 of this Article.
  - 4. Linear utility projects with less than 1,500 feet of cumulative open trench construction that are located outside the boundaries of a development project.
- (b). If the land disturbance activity threatens or impedes the ability of the City to meet its own permit requirements under the National Pollutant Discharge Elimination System (NPDES), the City Engineer may terminate the exemption and require the applicant to obtain a land disturbance permit in full compliance with Sections 24-34 of this Article.

**Sec. 24-38. Land disturbance permits -- limitations of usage.**

Authorization granted by issuance of a land disturbance permit shall be limited to authority to proceed with land disturbance as detailed in the approved Stormwater Pollution Prevention Plan subject to all other required approvals or permits associated with the proposed scope of work such as but not limited to Planning Commission approval of a final development plan, siteplan review and approval, issuance of a building permit, etc.

**Sec. 24-39. Responsible Person(s)**

The responsible Person(s) are the owner of the property upon which a Land Disturbance takes place and any person(s) performing a Land Disturbance activity. When a Land Disturbance Permit or Site Development Permit is issued, an owner is responsible for Land Disturbance activities from Permit issuance to closure, unless the City approves a transfer of responsibility. When Land Disturbance is authorized through the issuance of a Permit pursuant to the Building Code, the owner remains responsible until that Permit is closed and any open Land Disturbance Permits on the same property are closed.

The responsible person(s) shall inspect the site on a regular schedule, which shall be no less frequent than once each month, and shall increase such inspections when construction activity increases. The person responsible shall inspect the site within twenty-four hours of a precipitation event of one-half inch or greater within the city. Inspections shall be documented in writing and made available for inspection by the City Engineer or their designee upon request.

As a condition of approval, the city shall have the authority to inspect the site for compliance with the approved plan and this Article at all reasonable times, which may include the collection of samples of any discharge to the stormwater management system or surface waters.

**Sec. 24-40. Designation of Authorized Representatives.**

The owner of the property may designate, in writing, others to act on his or her behalf, however the responsibility for compliance with this Article with respect to land disturbance activities shall remain with the owner of the property until the issued permit has been officially closed.

**Sec. 24-41. Transfer of Permit.**

The land disturbance permit holder may request that the permit be transferred to another party. The transfer of a permit from one party to another shall be subject to the approval of the City Engineer and not be effective until written approval is issued.

**Sec. 24-42. Land disturbance permit – application**

Application fees for all applications for permits shall be established by resolution of the Governing Body. Application fees may be reviewed on an annual basis and revised as necessary by adoption of a new resolution. Copies of the current resolution establishing filing fees shall be on file in the offices of the City Clerk, the Engineering Division of the Public Works Department and Development Services Department.

- (a). Each application shall bear the name(s) and address(es) of the owner or developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm and shall be accompanied by a filing fee.
- (b). Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan.
- (c). Applications for land disturbance, site plan approval, or building permits shall be filed upon forms prescribed by the City and conform to the following:
  1. Construction documents shall clearly indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this Article, and other relevant laws, rules and regulations as determined by the City Engineer.
  2. The construction documents shall include a site plan drawn to an engineer scale showing the size and location of new construction and existing structures on the site and the legal description of the lot tract or parcel.
  3. The construction documents shall include a grading plan, drainage map, and an erosion and sediment control plan in conformance with Section 24-46, 47, 48 of this Article.
- (d). Applications for land disturbance permits shall be submitted for approval by the City Engineer. Issuance of land disturbance permits shall conform to the following:
  1. Where the proposed land disturbance activity covers multiple tracts of land or multiple lots, the permit shall be issued only to the common owner.
  2. A contact person or field representative shall be identified on every permit as a responsible party whom the City can contact regarding the installation, maintenance, and removal of erosion and sediment control measures. The land disturbance permit holder is responsible for timely written notification to the City Engineer of any changes to the contact person or field representative.

**Sec. 24-43. Building permits and land disturbance permits – closure.**

- (a). Closure of a building permit shall be completed in accordance with the provisions of this Article. In cases where there is not a separate land disturbance permit issued for a particular site, a final certificate of occupancy shall not be issued until the site has been permanently stabilized and all temporary BMP's removed and all drainage and grading is found to be in compliance with this Code.
- (b). Closure of a land disturbance permit is independent of closure of other permits. If a site has been partially stabilized, a land disturbance permit can be closed upon issuance of a subsequent land disturbance permit covering remaining unstabilized areas. Closure of a land disturbance permit shall be completed by obtaining a satisfactory final inspection and

issuance of a certificate of compliance. Timing of final inspections for land disturbance permits shall conform to the following:

1. For single-family or two-family construction only, where the permit holder seeks closure of the entire site subject to the permit, a final inspection can be completed after 80 percent of the housing units in the associated final plat have received final certificates of occupancy, or a minimum of three years after issuance of the first building permit for a housing unit. Additionally, no final inspection can be made before any temporary BMP's serving more than one lot are no longer needed and are removed.
2. For development other than single-family or two-family residential development, a final inspection can occur when all temporary BMP's serving more than one lot are no longer needed and are removed.
3. For single-family or two-family construction only, the holder of a land disturbance permit that includes multiple lots shall no longer be responsible for activities that occur on an individual lot for which all dwellings have received Certificates of Occupancy. In that event there shall be a final inspection of that lot and partial closure of the land disturbance permit prior to or at the time of issuance of a Certificate of Occupancy.

#### **Sec. 24-44. Expiration of permits**

Expiration of disturbance permits shall comply with the following:

- (a) Land disturbance permits shall expire if the authorized work has not commenced within 180 days after permit issuance. A land disturbance permit shall not expire after land disturbance activities have begun, but shall be closed pursuant to Section 24-43.

#### **Sec. 24-45. Review and approval**

- (a). The City Engineer will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within 21 days after receiving an application, and shall, in writing:
  1. Approve the permit application;
  2. Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions; or
  3. Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.
- (b). Failure of the City Engineer to act on an original or revised application within 21 days of receipt shall authorize the applicant to proceed in accordance with the plans as filed unless such time is extended by agreement between the applicant and the City Engineer. Pending preparation and approval of a revised plan, development activities shall be allowed to proceed in accordance with conditions established by the City Engineer.
- (c). Time Requirement. Where Land Disturbance activities have temporarily or permanently ceased on a portion of a project site for over 21 consecutive days, the disturbed areas shall be protected from Erosion by stabilizing the areas with mulch or other similarly effective soil stabilizing BMPs, unless the timeframe for compliance is extended by the City Engineer. Where implementation of stabilization measures is precluded by snow cover, stabilization measures shall be initiated as soon as practicable.

#### **Sec. 24-46. Erosion and Sediment Control Plan**

- (a). All proposed Land Disturbance activity that requires a Permit in accordance with Sections 24-34 of this Article shall be depicted on a site-specific Erosion and Sediment Control Plan. Land Disturbance activities that do not require a Permit in accordance with Section 24-34 of this Article are required to employ applicable BMPs included in standard details provided by the City. The Erosion and Sediment Control Plan shall be submitted to the City Engineer for review. The Plan shall include, at a minimum, the following information:
- (b). The Erosion and Sediment Control Plan shall include the following:
  1. Proposed site map.
  2. Proposed name of the development;
  3. Location by legal description;
  4. Names, addresses and telephone numbers of applicant and designer of plans;

5. Date, North Arrow, Scale of Plan (one inch to fifty (50) feet or one inch to one hundred (100 feet);
6. Existing and proposed topography of the entire site with contour lines sufficient to demonstrate runoff from the site. In lieu of contours, the plan preparer may provide arrows indicating direction of flow provided that said plans note that the flow information is based upon an on-site assessment by the plan preparer; specify on-going monitoring of site conditions and provide for performance review and plan modification in response to the observed conditions.
7. Any area subject to one-hundred-year flooding shall be indicated;
8. The boundary lines of the area included in the site plan, including angles, dimensions and reference to a section corner, quarter corner or point on a recorded plat;
9. If the SWPP proposes subgrade work in excess of 30" deep, existing sewers, storm sewers, water mains, culverts and other underground facilities within the tract, indicating locations of storm inlets, manholes and other pertinent features.
10. Areas to be disturbed.
11. A natural resources map identifying soils, forest cover, and resources protected under other articles of this code.
12. Proposed Erosion and Sediment Control BMPs to be employed.
13. A sequence of construction of the development site, including stripping and clearing; rough grading; construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
14. All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and after completion of development of the site. Depending upon the complexity of the project, the drafting of intermediate plans may be required at the close of each season.
15. Sufficient information regarding installation and maintenance of temporary and permanent vegetative control measures such that the SWPP clearly communicates the intended performance of the control measures and the manner in which said measures shall be installed and implemented.
16. Details and specifications for any sections of the final storm sewer system that must be constructed after the removal of BMPs such as temporary sediment basins.
17. Final stabilization plan for each phase.
18. Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
19. Work schedule.

**Sec. 24-47. Plan Preparation, Review and Approval.**

- (a). Review and Approval of Erosion and Sediment Control Plans. The Erosion and Sediment Control Plan shall be of sufficient clarity to indicate the location, manner, nature and extent of the work proposed. The Plan shall clearly show that the proposed work will conform to the provisions of this Code, the Erosion and Sediment Control Standards, and other relevant laws, Chapters, policies, rules and regulations as determined by the City Engineer. The City Engineer shall review the submitted documents to determine compliance with the Erosion and Sediment Control Standards. If the City Engineer finds that the Plan is not in compliance, the City Engineer shall advise the Applicant which elements of the Plan are not in compliance.

The City Engineer may either waive plan content requirements or require any additional information or data deemed appropriate information or data when they deem that doing so ensures compliance with the intent, purpose and provisions of this Section of the Code.

- (b). Preparation of Plans. Erosion and Sediment Control Plans submitted to the City for review must be prepared under the supervision of and sealed by a licensed professional engineer, landscape architect or by a Certified Professional in Erosion and Sediment Control (CPESC). The engineer or landscape architect must be licensed to practice in the State of Kansas. The plan shall be prepared at an engineer's scale of one inch

equals fifty (50) feet, or one inch equals one hundred (100) feet on a tract of land containing five (5) acres or more.

The City Engineer may waive this Plan preparation requirement if the Applicant's Plan consists entirely of utilizing standard plans and specifications as adopted in the City's Erosion and Sediment Control Standards.

- (c). Modifications to the plan shall be processed and approved or disapproved in the same manner as Section IV of this regulation, and may be authorized by the City Engineer by written authorization to the permittee, and shall include:
  - 1. Major amendments of the erosion and sediment control plan submitted to the City Engineer
  - 2. Field modifications of a minor nature
- (d). Amended Plans. Work shall be installed and maintained in accordance with the approved Plan. Changes made during construction that are not in compliance with the approved Plan shall be resubmitted for approval as an amended set of construction documents. Minor modifications of the approved Plan may be authorized by the City Engineer without formal review provided those modifications are consistent with the Erosion and Sediment Control Standards and standard industry practice.

#### **Sec. 24-48. Design Requirements**

- (a). Erosion and Sediment Control Plan designs shall be based on, but not limited to, the following principles:
  - 1. Erosion and Sediment Control Plans shall incorporate the following elements:
    - a. Soil stabilization shall be completed within *five days* of clearing or inactivity in construction.
    - b. Fit the development to existing site conditions.
    - c. Stabilize disturbed areas.
    - d. Minimize the extent of exposure.
    - e. Minimize duration of exposure.
    - f. Inspection and maintenance of control measures.
    - g. Use of performance measures and outcomes.
    - h. Timely employment and maintenance of all measures.
    - i. Break work activities into phases when possible
    - j. If seeding or another vegetative erosion control method is used, it shall become established within *two weeks* or the City Engineer may require the site to be reseeded or a nonvegetative option employed.
    - k. When possible, protect disturbed areas from any unnecessary run-on off stormwater from adjacent sites, at least during the construction period.
    - l. Special techniques that meet the design criteria on steep slopes or in drainage ways shall be used to ensure stabilization.
    - m. Soil stockpiles must be stabilized or covered at the end of each workday.
    - n. The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction season.
    - o. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
    - p. Techniques that divert upland runoff past disturbed slopes shall be employed.
    - q. Keep runoff velocities low.
    - r. Retain Sediment on the site.
  - 2. Sediment control techniques may include:
    - a. Settling basins, sediment traps, or tanks and perimeter controls.
    - b. Settling basins that are designed in a manner that allows adaptation to provide long term stormwater management, if required by the City Engineer
    - c. Protection for adjacent properties by the use of a vegetated buffer strips in combination with perimeter controls

3. Other Pollutants. In addition to Sediment, the Erosion and Sediment Control Plan shall provide for the control of other pollutants related to the Land Disturbance activity that might cause an adverse impact to water quality, including, but not limited to, discarded building materials, concrete truck washout, fuel, hydraulic fluids, chemicals, litter, and sanitary wastes.
4. Waterway and watercourse protection requirements shall include:
  - a. A temporary stream crossing installed and approved by the City Engineer if a wet watercourse will be crossed regularly during construction
  - b. Stabilization of the watercourse channel before, during, and after any in-channel work
  - c. Appropriate design of all on-site stormwater conveyance channels.
  - d. Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels
5. Construction site access requirements shall include:
  - a. a temporary access road provided at all sites
  - b. other measures required by the City Engineer in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains
- (b). Erosion and Sediment Control Standards. The City Engineer may adopt and maintain Erosion and Sediment Control Standards to assist in the administration of this Article.

**Sec. 24-49. Enforcement.**

- (a). The Governing Body hereby delegates to the City Manager the authority to designate a public officer to be charged with the administration and enforcement of this Article as it concerns illicit discharges. The public officer shall authorize the investigation of violations. If it is determined that a violation exists, then the officer shall file a written report with the City Manager and direct that an order of abatement be sent to the property owner, representative, or tenant. The Governing Body, by resolution, also may make such determination;
- (b). Except as provided by Subsection C, the order of abatement shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service, or if the same is unoccupied and the owner is a nonresident, then by mailing a notice by certified mail, return receipt requested, to the last known address of the owner.
- (c). If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of an order sent pursuant to this Section during the preceding 24-month period, the City may provide notice of the issuance of any further orders to abate or remove a nuisance from such property in the manner provided by Subsection B or as provided in this Subsection. Except as specifically provided in this Subsection, the City may provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this Section shall be given by telephone communication or first class mail
- (d). The order of abatement shall state:
  1. A common or legal description of the property, or both;
  2. The nature of the violation, including relevant ordinances, with sufficient information that would reasonably allow the recipient to determine the nature of the violation to allow for self-abatement;
  3. That the condition creating the violation shall be abated within a designated time period, provided that extensions of such time period shall be granted if the owner or agent of the owner of the property demonstrates that due diligence is being exercised in abating the violation;
  4. That the recipient, upon written request, may obtain a hearing before a designated hearing officer, provided such request is received by the City Clerk prior to the expiration of the designated compliance period;
  5. That failure to comply with the order of abatement shall result in the City abating the violation with the assessment of costs made against the property or by filing for judgment against the recipient;

6. That failure to pay such assessment within 30 days of the notice of costs shall result in the filing of a tax lien against the property, or the filing for judgment against the recipient, or both;
  7. That such violations are subject to prosecution.
- (e). If the recipient of the order of abatement makes a written request for hearing within the designated compliance period, then the City shall immediately schedule a hearing before a designated hearing officer. The hearing officer shall receive evidence, review the investigation, and prepare a written order. The order shall be sent by certified mail to all relevant parties within 10 days of the hearing, unless otherwise stated at the hearing, and prior to the City taking any action to abate the violation. The order shall describe the relevant facts relied upon, state the specific Code provisions being relied upon should a violation be found, and state any such other stipulations, methods of abatement, or orders as deemed necessary by the hearing officer.
  - (f). The City Manager, or his designee, is hereby designated as the hearing officer as the representative of the governing body for the purposes of conducting hearings requested by any recipient of an order of abatement.
  - (g). It shall be unlawful for the property owner of any property or the agent of the owner of the property who has received a compliance order or upon whom an order of abatement has been served to sell, transfer, mortgage, lease or otherwise dispose of to another until the provisions of the notice have been complied with, or until such property owner or agent of the owner of the property shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any order of abatement and shall furnish to the public officer a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of such notice of abatement and fully accepting responsibility without condition for making the corrections or repairs required by the notice of abatement.
  - (h). If the recipient of the order of abatement fails to comply with the order within the period of time designated in the order, or fails to comply with the order after a hearing on the matter, then the City may go onto the property to abate the violation in a reasonable manner. The City shall not be responsible for damage to property due to reasonable methods of gaining entrance onto the property or for damages to property in the reasonable exercise of its duty to the public to abate the violation(s). The City may use its own employees or contract for services to abate nuisances.
  - (i). If the City takes action to abate the violation, it shall provide a Notice of Costs to the property owner, representative, or tenant. The Notice of Costs shall be delivered by certified mail, return receipt requested, at the last known mailing address; or if the property is vacant or unoccupied, the Notice of Costs shall also be posted on the property in a reasonable manner. The recipient shall have 30 days from the date of the Notice to make full payment. The Notice of Costs shall state:
    1. The common or legal description of the property, or both;
    2. The nature of the violation, including relevant ordinances;
    3. The nature of the work performed to abate the violation;
    4. The costs incurred for the abatement of the violations in either a lump sum or in itemized form;
    5. That the notice is a demand for payment within 30 days from the date of notice;
    6. That failure to pay the entire amount within 30 days shall allow the City to file a tax lien against the property or to pursue litigation for the recovery of the costs, or both;
    7. That such additional remedies to recover costs shall include additional amounts including additional administrative costs, attorneys' fees when applicable, and interest;
    8. The payments shall be made by check or money order made payable to the City of Salina, Kansas, with no post-dating of the check, and sent to the address as stated within the notice with a written indication of the purpose for the payment and the address of the property where the violations occurred. Partial payments will not be accepted and shall be considered as non-payments, unless a payment arrangement has been agreed to and approved in writing by the Public Officer.
    9. If the payment of costs is not made within the 30-day period, the City may levy a special assessment for such costs against the lot or piece of land. The City Clerk at the time of certifying other City taxes to the County Clerk shall certify the

aforesaid costs, and the County Clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the City as other City taxes are collected and paid. Provided further, the City may collect the costs in the manner provided at K.S.A. 12-1,115, as amended, by bringing an action in the appropriate court as a personal debt. The City may pursue both assessment and collection at the same time until the full cost, including applicable interests, court costs, attorneys' fees, and administrative costs, including but not limited to, investigative cost as well as the cost of providing notice, including any postage, have been paid in full.

10. The abatement of a nuisance by the City shall not be a defense or excuse to the owner of a vehicle or property in violation of this article.

**Sec. 24-50. Injunctive Relief.**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Article. If a person has violated or continues to violate the provisions of this article, the authorized enforcement agency may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

**Sec. 24-51. Compensatory Actions.**

In lieu of enforcement proceedings, penalties, and remedies authorized by this Article, the authorized enforcement agency may impose upon violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

**Sec. 24-52. Criminal Prosecution.**

Any person that has violated or continues to violate this article shall be liable to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of not less than \$50 nor more than \$500 dollars per violation per day and/or imprisonment for a period of time not to exceed 6 months.

The authorized enforcement agency may recover all attorney's fees court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

**Sec. 24-53. Remedies Not Exclusive.**

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

If any section, subsection, paragraph, sentence, clause or phrase in this Article or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall no affect the validity or effectiveness of the remaining portions of this article.

**Sec. 24-54. Severability**

The provisions and sections of this article shall be deemed to be separable, and the invalidity of any portion of this article shall not affect the validity of the remainder.

If any section, subsection, paragraph, sentence, clause or phrase in this Article or any part thereof is held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article.

**Section 2.** That Article III of Chapter 24 is hereby added.

**Section 3.** That this ordinance shall be in full force and effect from and after its adoption and publication once in the official city newspaper.

Passed: May 10, 2010  
Adopted: May 24, 2010

[SEAL]

ATTEST:

Aaron G. Peck, Mayor

Lieu Ann Elsey, CMC, City Clerk